

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

BETTER GOVERNMENT ASSOCIATION,)
)
Plaintiff,)
)
v.) 2019CH13097
)
CHICAGO POLICE DEPARTMENT,)
)
Defendant.)

7326135

COMPLAINT

NOW COMES Plaintiff, BETTER GOVERNMENT ASSOCIATION, by the undersigned attorneys, LOEVY & LOEVY, and brings this suit to overturn Defendant CHICAGO POLICE DEPARTMENT’s refusal, in willful violation of the Illinois Freedom of Information Act, to comply with BGA’s request for records pertaining to the police encounter with Superintendent Eddie Johnson from October 17, 2019, near the 3400 block of South Aberdeen Street. In support of this Complaint, BETTER GOVERNMENT ASSOCIATION states as follows:

INTRODUCTION

1. Pursuant to the fundamental philosophy of the American constitutional form of government, it is the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of the Illinois Freedom of Information Act (“FOIA”). 5 ILCS 140/1.
2. Restraints on access to information, to the extent permitted by FOIA, are limited exceptions to the principle that the people of this state have a right to full disclosure of

information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of the people. 5 ILCS 140/1.

3. Under FOIA Section 1.2, “[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt. 5 ILCS 140/1.2.”

4. Under FOIA Section 11(h), “except as to causes the court considers to be of greater importance, proceedings arising under [FOIA] shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way.” 5 ILCS 140/11(h).

PARTIES

5. Plaintiff BETTER GOVERNMENT ASSOCIATION (“BGA”) is the FOIA requester in this case. BGA is a non-partisan, non-profit corporation located in Cook County, Illinois. BGA’s mission is to promote integrity, transparency, and accountability in government by exposing waste, fraud, and corruption; to advocate for effective public policy; and to inform and engage the community.

6. Defendant CHICAGO POLICE DEPARTMENT (“CPD”) is a public body located in Cook County, Illinois.

OCTOBER 30, 2019, FOIA REQUEST

7. On October 30, 2019, BGA submitted a FOIA request to CPD for “all reports, dash camera videos, body camera videos, and other records related to the police encounter with Superintendent Eddie Johnson on October 17, 2019 near the 3400 block of South Aberdeen Street.” Exhibit A.

8. On November 4, 2019, CPD assigned the FOIA number P536774 to the matter. In the same letter, CPD denied the request in its entirety pursuant to Section 7(1)(d)(i) and 7(1)(d)(ii). CPD based the denial on an investigation conducted by an entity other than CPD. Exhibit B.

9. CPD has not proven that the requested records are exempt under FOIA.

10. The requested records are not exempt.

COUNT I – FAILURE TO PRODUCE RECORDS

11. The above paragraphs are incorporated by reference.

12. CPD is a public body under FOIA.

13. The records sought in the FOIA request are non-exempt public records of CPD.

14. CPD has violated FOIA by failing to provide Plaintiff with the records it requested.

COUNT II – FAILURE TO PERFORM AN ADEQUATE SEARCH

15. The above paragraphs are incorporated by reference.

16. CPD is a public body under FOIA.

17. CPD bears the burden of proving beyond material doubt that it performed an adequate search for responsive records.

18. CPD has failed to come forward with sufficient evidence to carry this burden.

19. CPD has violated FOIA by failing to adequately search for responsive records.

COUNT III – WILLFUL VIOLATION OF FOIA

20. The above paragraphs are incorporated by reference.

21. CPD is a public body under FOIA.

22. The records sought in the FOIA request are non-exempt public records of CPD.

23. CPD has willfully and intentionally or otherwise in bad faith violated FOIA.

WHEREFORE, BGA asks that the Court:

- i. in accordance with FOIA Section 11(f), afford this case precedence on the Court's docket except as to causes the Court considers to be of greater importance, assign this case for hearing and trial at the earliest practicable date, and expedite this case in every way;
- ii. declare that CPD has violated FOIA;
- iii. order CPD to produce the requested records;
- iv. enjoin CPD from withholding non-exempt public records under FOIA;
- v. order CPD to pay civil penalties;
- vi. award Plaintiff reasonable attorneys' fees and costs;
- vii. award such other relief the Court considers appropriate.

RESPECTFULLY SUBMITTED,

/s/ Matthew V. Topic

Attorneys for Plaintiff

BETTER GOVERNMENT ASSOCIATION

Matthew Topic
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Merrick Wayne
LOEVY & LOEVY
311 North Aberdeen, 3rd Floor
Chicago, IL 60607
312-243-5900
foia@loevy.com
Atty. No. 41295

From: Jared Rutecki <jrutecki@bettergov.org>
Sent: Wednesday, October 30, 2019 11:03 AM
To: FOIA
Subject: FOIA request

Dear FOIA officer,

This is Jared Rutecki with the Better Government Association with a request for records under the Illinois Freedom of Information Act.

I am requesting all reports, dash camera videos, body camera videos, and other records related to the police encounter with Superintendent Eddie Johnson on October 17, 2019 near the 3400 block of South Aberdeen Street.

I ask these records to be made available for inspection within five business days as required by law, and be provided electronically where possible.

This request is for a possible news story. I ask that you waive fees as the law allows, and make records available electronically where possible. If you have any questions please call me.

Thank you,

Jared Rutecki

Investigative Reporter

Better Government Association

Exhibit A

223 W Jackson Blvd Ste 300

Chicago, IL 60606

312-821-9032

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Jared Rutecki
Investigative Reporter
Better Government Association
312-821-9032

FILED DATE: 11/12/2019 11:56 AM 2019CH13097



Lori E. Lightfoot
Mayor

Department of Police · City of Chicago
3510 S. Michigan Avenue · Chicago, Illinois 60653

Eddie T. Johnson
Superintendent of Police

November 4, 2019

Via Email:

Jared Rutecki
Better Government Association
jrutecki@bettergov.org

RE: NOTICE OF RESPONSE TO FOIA REQUEST
FOIA FILE NO.: P536774

Dear Mr. Rutecki:

The Chicago Police Department (CPD) is in receipt of your Freedom of Information Act (FOIA) request, received October 30, 2019 for the following:

"I am requesting all reports, dash camera videos, body camera videos, and other records related to the police encounter with Superintendent Eddie Johnson on October 17, 2019 near the 3400 block of South Aberdeen Street."

Your request was reviewed by the undersigned in collaboration with the Department's Field Services Section and Bureau of Internal Affairs and in consultation with the City's Office of Inspector General. It was determined that your request is denied.

Please be advised that the requested records directly relate to an ongoing investigation with the City's Office of Inspector General. It was determined that any records pertaining to this case are exempt pursuant to FOIA under exemption 7(1)(d)(i) of FOIA (5 ILCS 140/7(1)(d)(i) (West 2010), as amended by Public Acts 97-333, effective August 12, 2011; 97- 385, effective August 15, 2011; 97-452, effective August 19, 2011), which allows a public body to withhold records that would interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request and 7(1)(d)(ii), which permits the withholding of documents that would interfere with active administrative enforcement proceedings conducted by the public body that is the recipient of the request.

In order to ascertain whether your request would interfere with the ongoing investigation, the matter was forwarded to the City's Office of Inspector General (OIG). After conducting a reasonably diligent search for records responsive to your request and consulting with OIG, OIG has determined that disclosing the responsive records would interfere or obstruct the integrity of the active investigation for future administrative and/or criminal charging. Release of such records would divulge information that would affect witness testimony, thereby challenging the integrity and jeopardizing the progress of the

active investigation. Therefore, in order to protect the integrity of the investigation, it was determined that these records must be withheld pursuant to 7(1)(d)(i) and (ii).

If I can be of further assistance, please contact me at the following address:

Chicago Police Department
Attention: Freedom of Information
Office of Legal Affairs, Unit 114
3510 S. Michigan Avenue
Chicago, IL 60653
foia@chicagopolice.org

You have a right of review by the Illinois Attorney General's Public Access Counselor, who can be contacted at 500 S. Second St., Springfield, IL 62706 or by telephone at 877-299-3642. You may also seek judicial review under 5 ILCS 140/11.

Sincerely,

H. Aden
Freedom of Information Act Officer
Chicago Police Department
Office of Legal Affairs, Unit 114
3510 S. Michigan Ave.
Chicago, IL 60653